

FILED BY CLERK

JUN 28 2011

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2011-0052-PR
)	DEPARTMENT A
Respondent,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
ANTHONY GORDON,)	the Supreme Court
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR18142

Honorable Terry L. Chandler, Judge

REVIEW GRANTED; RELIEF DENIED

Barbara LaWall, Pima County Attorney
By Jacob R. Lines

Tucson
Attorneys for Respondent

Anthony Gordon

Florence
In Propria Persona

B R A M M E R, Presiding Judge.

¶1 Petitioner Anthony Gordon seeks review of the trial court's denial of his first petition for post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim. P. Gordon was convicted and originally sentenced in 1986 for burglary, kidnapping, and sexual assault. After the Arizona Supreme Court remanded his case for resentencing in 1989, *see State v. Gordon*, 161 Ariz. 308, 316, 778 P.2d 1204, 1212 (1989), the trial court

resentenced him to consecutive, thirty-year prison terms for the kidnapping and sexual assault convictions and a concurrent twenty-two-year term for the burglary conviction. In his original and supplemental petitions for post-conviction relief, filed in 2009 and 2010, he argued that counsel had been ineffective in representing him at resentencing and that the new sentences imposed by the court were illegal. The court denied relief after addressing each of Gordon's claims and finding they were "either procedurally precluded or [did] not present a material issue of fact or law which would entitle the defendant to relief under [Rule 32]." This petition for review followed.

¶2 We review a trial court's summary denial of post-conviction relief for an abuse of discretion. *State v. Bennett*, 213 Ariz. 562, ¶ 17, 146 P.3d 63, 67 (2006). On review, Gordon repeats most of the arguments he raised below, but fails to assert any way in which the court has abused its discretion in denying his claims.¹ Moreover, we find no abuse of discretion based on the record before us.

¶3 In the body of its order, the trial court clearly identified and thoroughly addressed each of Gordon's allegations and resolved them in a manner sufficient to

¹On review, Gordon does not challenge the trial court's denial of relief on his claim that he was sentenced erroneously to a "flat-time" sentence pursuant to former A.R.S. § 13-604.02, 1987 Ariz. Sess. Laws, ch. 307, § 5. Accordingly, this claim is waived, and we will not consider it. *See* Ariz. R. Crim. P. 32.9(c)(1) ("Failure to raise any issue that could be raised in the petition . . . for review shall constitute waiver of appellate review of that issue."). Nor will we consider the assertions of ineffective assistance of appellate counsel Gordon lists, without argument, as issues presented for our review. Gordon did not assert these claims in his post-conviction relief proceedings below, and we will not consider claims raised for the first time on review. *See* Ariz. R. Crim. P. 32.9(c)(1)(ii) (petition for review to contain issues "decided by the trial court . . . which the defendant wishes to present to the appellate court for review"); *State v. Ramirez*, 126 Ariz. 464, 468, 616 P.2d 924, 928 (App. 1980) (appellate court does not consider issues in petition for review that "have obviously never been presented to the trial court for its consideration").

permit this or any other court to conduct a meaningful review. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993). Ample evidence supported the court's findings, and no purpose would be served by repeating the court's analysis here. *See id.* We add only that Gordon's claim that he was sentenced erroneously to consecutive terms for his sexual assault and kidnapping convictions not only is precluded because it was adjudicated finally on the merits on appeal after his original sentence was imposed, as the trial court found,² but because it was waived when he omitted the claim from his appeal after resentencing. *See State v. Gordon*, No. 2 CA-CR 89-0669 (memorandum decision filed Sep. 20, 1990); Ariz. R. Crim. P. 32.2(a)(3) (claim precluded when "waived at trial, on appeal, or in any previous collateral proceeding").

¶4 Based on the record before us and the applicable law, the trial court did not abuse its discretion in denying Gordon's post-conviction claims. Accordingly, although we grant review, we deny relief.

/s/ J. William Brammer, Jr.

J. WILLIAM BRAMMER, JR., Presiding Judge

CONCURRING:

/s/ Joseph W. Howard

JOSEPH W. HOWARD, Chief Judge

/s/ Philip G. Espinosa

PHILIP G. ESPINOSA, Judge

²On appeal of Gordon's original sentence, the supreme court expressly concluded, "The sentences for kidnapping and sexual assault may be consecutive to each other, but must be concurrent with the burglary sentence." *Gordon*, 161 Ariz. at 316, 778 P.2d at 1212.